No. 75-1107

MAR 1 1976

MICHAEL RODAK, JR., CLERK

In The Supreme Court of The United States

OCTOBER TERM, 1975

LAWRENCE HOLZMAN,
Trustee in Bankruptcy,

Petitioner,

vs.

ALFRED M. LEWIS, INC.,

Respondent.

RESPONSE TO PETITION
FOR WRIT OF CERTIORARI
TO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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INTRODUCTION

The recitals of jurisdiction, questions presented, statutory provisions involved, statement of the case and the opinions appearing in the Trustee's petition are an adequate base to explore the desirability or need for the issuance of a writ. Judicial discretion is sought to be invoked pursuant to Rule 19(b) "Where a court of appeals . . . has decided an important question of federal law which has not been, but should be, settled by this court . . ."

REASONS FOR DENYING THE WRIT

I

The Circuit Court in its opinion was giving effect to irreconcilable policies reflected in recognizing property rights established by common law, Bankruptcy Act 70a, 11 USC §110a, and avoiding preferential liens, Bankruptcy Act 67c (1) (A), 11 USC §107c(1) (A). Petitioner would have the Court ignore the one policy and advance the other at the expense of the defrauded seller. The nondefrauded creditors are benefitted at the expense of the defrauded seller. The bigger the fraud the better.

II

The pre-Code common law recognized the right of a defrauded seller to rescind in the face of a bankruptcy. *Donaldson v. Farwell*, 93 US 631, 23 L.ed. 993 (1877).

III

The Commercial Code section here involved is merely a codification of existing common law. To take that code section and ignore its antecedents is to attempt to create an important question of law when in fact none exists.

CONCLUSION

The application for the writ ought to be denied.

Respectfully submitted,

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